

## **Overview of SB 300 (sponsored by Sen. Kenneth Bogner)**

<https://leg.mt.gov/bills/2019/billpdf/SB0300.pdf>

### ***Protecting Property Rights of Owners in HOAs and Condo Associations***

#### **Bill History and Sponsors**

- SB 300 passed the Senate 50-0 and the House Judiciary Committee 17-2.
- It has been amended to resolve issues raised by former opponents and to incorporate other good suggestions.
- Its co-sponsors are Sens. Ellsworth, Fielder, Hinebauch, MacDonald, and Small; and Reps. Keogh and Zolnikov.

#### **The Problem Facing Property Owners in Montana**

- Most people buy property with the intention to use it in a certain way – such as for residential use, rental, vacation home, agricultural, any development, and/or commercial use.
- If those would-be buyers consider properties in HOAs or condo associations, they rely on any then-existing Covenants or Bylaws to confirm how they can and can't use the property before they buy it.
- When those buyers get loans (like FHA loans), take out mortgages, or arrange to inherit or otherwise acquire property, they have to sign binding documents and contracts that specify how they are going to use their property – such as for a primary residence, single family use, income-generating, or otherwise.
- Many owners make substantial investments in buying their properties and in improving it for specific purposes – like to use an office or to rent. Indeed, a home is usually a person's biggest asset.
- Currently, however, under Montana law, there are no limits on HOAs and very few limits on condo associations.
  - This puts owners at risk for associations to essentially change the rules as the game is being played with respect to fundamental use rights.
  - Some such retroactive changes put owners in violation of their loan, mortgage, and tax contracts.
  - Also, they create financial burdens on homeowners who purchased property for specific purposes.

#### **Legislative Solution – SB 300**

- Montana does not have or need much regulation on the freedom of contract that exists in HOAs or condo associations, however, owners should be protected from associations retroactively limiting the most fundamental rights that owners received when they bought their properties and from associations interfering with owners' loans and other contracts related to their properties, unless the affected owners' consent.
  - If the applicable association covenants or bylaws allow a certain use, such as rentals, at the time of purchase, a majority of owners in the association should not be able to deprive a minority of owners of their rights to rent their property by amending the applicable covenants or bylaws *ex post facto*.
  - When associations' efforts to self-regulate interfere with owners' property, privacy, and contract rights, the Legislature should prioritize and protect the fundamental rights that come from property ownership.
- This bill does not limit the freedom that owners' associations have to enact most rules (concerning things like paint colors, noise limits, pets, and the like).
- The bill does not limit the ability of owners' associations to make rules with respect to how future owners can use or rent their properties either, and the bill does not provide grandfathering for successors-in-interest.
- SB 300 only seeks to create a narrow limitation – a “grandfather clause” that will protect the most fundamental property, privacy, and contract rights of existing owners that existed when the owners acquired their property.

#### **Support for SB 300**

- Two-thirds of states around the country have grandfather clause laws like SB 300, including states that have adopted the Uniform Condo Act of 1977, as well as other states that have guaranteed this protection to homeowners in HOAs, including Idaho, Nevada, Alaska, California, and Georgia.<sup>1</sup>
- Montana has a grandfather clause for prior uses like SB 300 in the zoning context. MCA 76-2-208.
- Numerous realtors, property managers, title agents, lenders, bankers, and lawyers have shared their support for the bill, including the 10 people who submitted support letters to the Senate before the Judiciary Committee hearing.

#### **Thank you so much for your consideration and your efforts to protect property rights in Montana.**

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<sup>1</sup> See Idaho Code Ann. § 55-115(3); Georgia Code § 44-5-60(4); Cal. Civ. Code § 4740(a) and (b); N.R.S. § 116.2117; Alaska Stat. § 34.08.250; Fla. Stat. § 718.110(13); Tenn. Code Ann. § 66-27-317; Ariz. Rev. Stat. § 33-1227; Wash. Rev. Code § 64.34.264.